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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



DIVISION ONE  
FILED: 04/28/2011  
RUTH A. WILLINGHAM,  
CLERK  
BY: DLL

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

SYLVIA DELGADO,	)	No. 1 CA-IC 10-0037
	)	
Petitioner,	)	DEPARTMENT C
	)	
v.	)	
	)	
THE INDUSTRIAL COMMISSION OF	)	
ARIZONA,	)	<b>MEMORANDUM DECISION</b>
	)	(Not for Publication -
Respondent,	)	Rule 28, Arizona Rules of
	)	Civil Appellate Procedure)
	)	
RAYTHEON SYSTEMS COMPANY	)	
LLC,	)	
	)	
Respondent Employer,	)	
	)	
LIBERTY MUTUAL LIFE INSURANCE	)	
CO.,	)	
	)	
Respondent Carrier.	)	
_____	)	

Special Action - Industrial Commission

ICA Claim No. 20002-020420  
Carrier Claim No. WC648-134980

The Honorable Thomas A. Ireson, Administrative Law Judge

**AWARD AFFIRMED**

Sylvia Delgado  
Petitioner Employee *In Propria Persona*

Sahurita

Andrew F. Wade, Chief Counsel  
Industrial Commission of Arizona

Phoenix

Moeller Law Office  
By M. Ted Moeller  
Attorney for Respondent Employer/Carrier

Tucson

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**B R O W N**, Judge

¶1 Sylvia Delgado appeals an Industrial Commission of Arizona ("ICA") award finding she did not suffer a compensable injury. For the following reasons, we affirm.<sup>1</sup>

**BACKGROUND**

¶2 On review, we evaluate the evidence in the light most favorable to upholding the award. *Lovitch v. Indus. Comm'n*, 202 Ariz. 102, 105, ¶ 16, 41 P.3d 640, 643 (App. 2002). Delgado was an employee at Raytheon from 1985 to 2000, where she held various positions and worked in different buildings. In 1994, after returning from maternity leave, she was assigned to work in a large warehouse installing circuit boards. Painters sometimes painted the areas in the immediate vicinity of where she worked and she believed the paint and other materials in the warehouse could have harmful health risks.

¶3 Soon after starting this work, she developed hearing loss. She also later developed shortness of breath, confusion,

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<sup>1</sup> The court has received Appellee's motion to strike documents not presented to the lower court, and the Appellant's response. Based on our decision, the motion is denied as moot.

anger, hives, and severe joint pain. She visited the employer's on-site medical clinic many times between 1994 and 2000. She was told that her symptoms were not work-related but she believed that they were.

¶14 As noted by the Administrative Law Judge ("ALJ"), the procedural facts of the claim are unusual. It appears that some medical reports were filed in 2000 without a Worker's Report of Injury, resulting in the ICA notifying Delgado on July 20, 2000, that her claim was not valid without a claim form. The carrier issued a notice of claim status denying the claim on July 10, 2000, but on August 23, 2000, the ICA requested that the notice be rescinded because there was no valid claim.

¶15 On May 8, 2001, a Worker's Report of Injury was filed but it did not contain a specific date of injury, instead answering generally "1995-1996." After notification of the missing information, on September 14, 2001, a specific injury date was filed, but there is no record that the carrier was notified of the claim. Nothing else occurred on the claim until Delgado contacted the ICA on July 24, 2009, to inquire about her claim. At that time, the ICA again requested that the carrier rescind the July 10, 2000, notice and notified the carrier of the claim. The carrier denied the claim on August 5, 2009.

¶16 Following an evidentiary hearing, the ALJ found Delgado's claim non-compensable, and the award was affirmed upon review. Delgado timely requested judicial review.<sup>2</sup>

#### DISCUSSION

¶17 Delgado first argues that the ALJ's award is not supported by the evidence. In a claim for workers' compensation benefits, the employee bears the burden of proving that an injury is compensable. *Yates v. Indus. Comm'n*, 116 Ariz. 125, 127, 568 P.2d 432, 434 (App. 1977). A compensable claim requires proof of both medical and legal causation. *DeSchaaf v. Indus. Comm'n*, 141 Ariz. 318, 320, 686 P.2d 1288, 1290 (App. 1984). Medical causation requires expert medical testimony establishing that the incident is a contributing cause of the injury. *Id.* Legal causation requires that an injury arise out of, and in the course of employment. *Id.*; see also Ariz. Rev. Stat. ("A.R.S.") § 23-1021 (2010) (stating that employees are

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<sup>2</sup> Prior to the ALJ's decision, Delgado filed a different claim, alleging bad faith and/or unfair claim processing practices by Raytheon, which was denied. Delgado requested a hearing that was scheduled by the ICA, but then cancelled after an informal conference wherein the parties agreed to suspend the hearing pending appellate review of the claim at issue here. Therefore, we do not address Delgado's claim for bad faith and/or unfair processing because it is a separate claim that must be fully adjudicated below before being addressed on appeal.

entitled to workers' compensation due to accidents arising out of and in the course of employment).<sup>3</sup>

¶18 When medical testimony conflicts, it is the ALJ's duty to resolve any conflicts in the testimony given. *Perry v. Indus. Comm'n*, 112 Ariz. 397, 398, 542 P.3d 1096, 1097 (1975). The medical condition must be established to a reasonable degree of medical probability. *Phelps v. Indus. Comm'n*, 155 Ariz. 501, 506, 747 P.2d 1200, 1205 (1987).

¶19 Delgado testified that the health problems she has suffered as a result of her exposure to harmful chemicals at Raytheon include memory loss, joint pain, loss of hearing, hives, rashes, loss of sleep, and trouble eating. She also testified that she lost "a lot of hair" when she was first exposed.

¶10 Dr. Gray performed a medical examination of Delgado in July 2000 and did not examine her again until 2009. He testified that he found antibodies in Delgado's system, showing that she had been exposed to the chemical toluene diisocyanate ("TDI"). He acknowledged, however, that he did not review pulmonary tests or lab results and was not aware of any environmental or biological testing for the areas where Delgado had worked. Though his testimony did not provide a clear

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<sup>3</sup> Absent material revisions, we cite the current version of the statute.

conclusion as to medical causation, his written report dated September 5, 2000 stated:

Based on these findings [of exposure, rash, cognitive difficulty, chronic fatigue, and fibromyalgia] I would say that it is a reasonable medical certainty that exposure to the chemicals in Raytheon have [sic] exacerbated her pre-existing tendency to atopy and are directly responsible for the urticarial rashes that develop on entry into the plant.

¶11 Dr. Sullivan testified that when he examined Delgado in 2009, she was complaining only of her skin conditions. He also testified to a reasonable degree of medical certainty that he could not make a diagnosis that her skin complaints were "related to anything, without having proper skin testing related to that chemical." The substance of his testimony was that Delgado did appear to be exposed, but that there was no medical evidence of a reaction to the exposure when Delgado's pulmonary testing was normal and no skin testing had been completed. His written report, after examining Delgado on November 10, 2009, summarized her medical records, including that Dr. Gray believed that her exposure to chemicals at Raytheon exacerbated her existing conditions. He also found in the records that Delgado's allergist documented the skin condition but found it to not be work-related. Dr. Sullivan summarized:

Ms. Delgado worked around many chemicals, including epoxy resins. Her medical condition of dizziness, fatigue,

fibromyalgia-type pains, and cognitive changes are in my opinion unrelated to Raytheon . . . I judge her symptoms to be unrelated to Raytheon and appear to be related to anxieties in a general fashion.

¶12 In sum, the doctors agreed that Delgado had antibodies to TDI in her blood, indicating prior exposure. They also agreed that their opinions were limited because no environmental or biological testing was completed in Delgado's work area at the time of the exposure. The doctors disagreed, however, on whether the evidence of exposure was sufficient to establish a causal relationship without the further testing.

¶13 Appropriate factors for an ALJ to consider in resolving conflicting testimony include the diagnostic methods used, the qualifications and backgrounds of the expert witnesses, any bias or interest in the case, and whether the testimony is speculative. *Carousel Snack Bar v. Indus. Comm'n*, 156 Ariz. 43, 46, 749 P.2d 1364, 1367 (1988). We find no abuse of discretion with the ALJ's decision. See *Pac. Fruit Express v. Indus. Comm'n*, 153 Ariz. 210, 214, 735 P.2d 820, 824 (1987) (reasoning that the appellate court does not reweigh the evidence, and considers it in the light most favorable to sustaining the ALJ decision). After considering the evidence presented by the two doctors, the ALJ determined that Dr. Sullivan's opinion was more correct and well-founded as to

medical causation, and we find no abuse of discretion in the determination.

¶14 Next, Delgado argues that the ALJ did not allow evidence that should have been admitted. An ALJ's decision to exclude evidence will not be set aside on appeal unless the decision represents a clear abuse of discretion. *Estate of Sims v. Indus. Comm'n*, 138 Ariz. 112, 114, 673 P.2d 310, 312 (App. 1983). Here, Delgado refers to nineteen documents in her brief that she submitted to the ALJ on February 10, 2010. Under the administrative hearing rules, a party must file non-medical documentary evidence at least fifteen days prior to the first scheduled hearing, which would have been December 28, 2009. A.A.C. R20-5-155(B). Therefore, the ALJ acted within his discretion in excluding the evidence as untimely.



**CONCLUSION**

¶15           For the foregoing reasons, we affirm.

/s/

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MICHAEL J. BROWN, Judge

CONCURRING:

/s/

\_\_\_\_\_  
DANIEL A. BARKER, Presiding Judge

/s/

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MARGARET H. DOWNIE, Judge